

2. Notwithstanding the argument raised by the Plaintiff that USF & G had submitted to the jurisdiction of the Superior Court by agreeing to issue a payment bond under G.L. c. 149 in the Commonwealth of Massachusetts for construction of state-sponsored schools, this matter was removed to the federal court. The Plaintiff moved for remand on the grounds that the Superior Court had broader experience in moving these matters quickly through the system as intended by the legislature, and that USF & G had waived diversity as a basis for removal. The Court denied the Plaintiff's Motion for Remand.
3. On May 31, 2007, this Court heard argument on Lovett-Silverman's Motion for Summary Judgment. In its responsive papers, the Plaintiff produced an affidavit from its expert witness, William Gallagher, interpreting an e-mail from Lovett-Silverman to "bang the subs" as an attempt to delay payment to subcontractors and potentially litigating them into bankruptcy.
4. The Plaintiff contended, and continues to contend, that the existence of the expert affidavit, creates a genuine question of material fact as to the conduct of Lovett-Silverman and its efforts to misrepresent, thus requiring denial of the motion as a matter of law.
5. At the same hearing, the Plaintiff also argued that Landworks was entitled to, and required, its speedy trial under c. 149 §29, which states that upon motion the matter "shall" be advanced for speedy trial. The Plaintiff noted that this was crucial in order to prevent the harm that Lovett-Silverman had intended, according to Plaintiff's expert sworn affidavit. The Court denied the Motion for Speedy Trial.

6. More than six months have elapsed since the hearing in May of 2007. This case has been at a standstill pending determination of the Motion for Summary Judgment.
7. During this period of time, Landworks, having sustained the loss of its monies owed by USF & G, has been rendered essentially insolvent. The delay in adjudication and trial in this case has, effectively, conformed to the intent of Lovett-Silverman as defined by Plaintiff's expert. In short, Landworks is being litigated into bankruptcy by being denied its payment.
8. It is imperative that this matter move forward to trial before Landworks becomes a victim of the axiom that "justice delayed is justice denied."
9. Therefore, the Plaintiff respectfully requests that this Court address the outstanding motion argued on May 31, 2007 so that this matter may resolve expeditiously as anticipated by G.L. c. 149 §29.

Respectfully Submitted,

Landworks Creations, LLC

By its attorney,

s/Robert N. Meltzer

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